Bail Slip

The Appellant/Accused viz., Senthil was directed to be released on bail as per order of this Court dated 29.10.2002 and made in CRP.MP.No.10949/2002 in Crl.A.1432/2002 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 02.07.2007

Coram:-

The Hon'ble Mr. Justice R.REGUPATHI

Criminal Appeal No.1432 of 2002

Senthil ... Appellant

vs.

State rep. by
Inspector of Police,
Virudhachalam Police Station,
Cuddalore District
(Crime No.136 of 2000) ... Respondent

Appeal against the order of conviction and sentence passed by the Additional District Judge (FTC No.III), Vridhachalam, dated 26.08.2002, in S.C. No.284 of 2001.

For Appellant : Mr.S.Saravanakumar
For Respondent : Mr.Hasan Mohamed Jinnah,
Govt. Advocate (Crl. Side)

J U D G M E N T

The appellant/sole accused, who was charged with offences under Sections-376 read with 511 IPC. and 341 IPC. was tried by the learned Additional District Judge (Fast Track Court No.III), Vridhachalam, and, on conclusion of the trial, he was found guilty of the offences charged and sentenced to undergo two years R.I. for the offence under Sections 376 read with 511 IPC. and also to pay a fine of Rs.3,000/-, in default, to undergo R.I. for three months; and sentenced to undergo one month simple imprisonment for the offence under Section 341 IPC. Both the sentences were ordered to run concurrently. On payment of the fine amount imposed, a sum of Rs.1,500/- was directed to be paid to PW-2, the victim girl, as compensation. Aggrieved against the said order of conviction and sentence

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passed by the trial court, the above Appeal is preferred before this Court.

2. The case of the prosecution is that on 26.02.2000, PW-2, the victim girl, aged about 19, is said to have gone to the field in search of a missing bullock and at that time, the deceased, who came there, pushed her down, gagged her and committed rape on her.

PW-1 is the father of the victim girl PW-2. It is his evidence that her daughter, who went by 6.00 p.m. on that day in search of a missing bullock, did not turn up even after 6.30 p.m.; therefore, he went in search of her and on reaching the field, he found her lying unconscious. When questioned as to what happened, she did not reply as she was unconscious. He brought her home and at that time, PW-4, mother of PW-2, also arrived there. PW-2, on regaining consciousness, informed that it was the accused who pushed her down and committed rape on her. PWs.1 and 4 took PW-2 to a private hospital, where she was given treatment as she complained pain. PW-1 requested the appellant to marry PW-2 for which he refused; therefore, PW-1, accompanied by PWs-2 and 4, went to the police Station and lodged a complaint/Ex.P1 with PW-10 Inspector of Police, Veppur.

PWs-1, 2 and 4 speak about the case of the prosecution. PW-3 is the Village Administrative Officer, who, on intimation from the Investigating Officer, visited the police station and he attested the complaint given by PW-1. Ex.P-2 is the signature of PW-3 in ExP1.

PW-5, brother of the appellant, has been examined to substantiate that the appellant made extra judicial confession to him, however, he has been treated as hostile. PW-6 is the witness for observation mahazar and PW-7 for statement of the accused and both the witnesses turned hostile.

PW-8 is the Medical Officer, who examined the appellant. Ex.P7 is the Age and Potency Certificate issued by PW-8 to the effect that the accused is capable of performing sex. PW-2 was produced before PW-9, Medical Officer, on 29.02.2000 at 11.05 A.M. and, on examination, she found that PW-2 was not subjected to any harassment and further, there is no material at all to substantiate that the victim has been subjected to rape. PW-10, the Inspector of Police, after collecting all relevant materials including medical and forensic opinions, filed final report.

3. When questioned under Section 313 Cr.P.C. by putting all the incriminating materials available against him, the accused denied his complicity in the crime and pleaded innocence. Upon hearing both the parties and perusing the oral and documentary evidence, the learned trial Judge convicted and sentenced the appellant as aforementioned, resulting in filing of the present Appeal.

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4. Now, the point before this Court for consideration is as to whether the order of the trial court warrants interference?

5. Learned counsel for the appellant submits that the occurrence took place on 26.02.2000 at 6 P.M., however, the complaint was given on the next day at 3 P.M. According to him, the evidence of the Medical Officer PW-9, who examined PW-2, would substantiate the defence plea that no such rape had taken place as alleged by the prosecution. Stating that the evidence of PW-2 appears to be imaginary, he further submits that, on the previous day, a private doctor is said to have examined the victim girl to whom nothing has been stated about the occurrence and the said Doctor has not been examined before Court.

6. Per contra, learned Government Advocate, relying on the evidence of PW-2, submits that, at the time when PW-2 went to the field in search of a missing bullock, it was the appellant, who forcibly pushed her down, gagged her and committed some mischief. Though PW-2 has stated that she has become unconscious and the Medical Officer's evidence does not corroborate the evidence of PW-2, the fact remains that she has been subjected to some sexual harassment. Therefore, if not convicted under Section 376 read with 511 IPC, relying on the evidence of PW-2, corroborated by the testimonies of PWs-1 and 4, he may be convicted for offences under Sections 354 and 341 IPC.

7. I have perused the materials available on record and considered the contentions projected by the respective counsel.

8. A perusal of the evidence of the Medical Officer PW-9 shows that, during the course of examination, she did not notice any injury on the private parts of the victim girl. Further, she has specifically stated that there is no material to substantiate/suggest that the victim has been subjected to sexual intercourse. Thus, though PW-2 has positively stated that she has been subjected to rape, such version is not corroborated by the evidence of the Medical Officer. More over, PW-2 herself has stated that she became unconscious at that time. From this, it appears that even at the first instance itself, when the appellant dragged her to a private place, she became unconscious and thereafter nothing happened. That being so, this Court can safely come to a conclusion that the appellant did not go to the extent of committing rape, however, he has committed the offence of outraging the modesty of a woman. Therefore, while setting aside the conviction and sentence imposed for the offences under Sections 376 read with 511 IPC., I am of the considered view that the appellant could be convicted for the offences punishable under Sections 354 and 341 IPC.

9. Learned counsel for the appellant submits that, during the course of trial and appeal, the appellant was in judicial custody for a period of 70 days. On verification, learned Government Advocate submits that PW-2, the victim girl subsequently got married and settled in a neighbouring village.

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In view of the facts and circumstances involved, the period of sentence already undergone by the appellant is treated as the sentence for offences under Sections 354 and 341 IPC. With this modification, the appeal stands disposed of.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. The Addl. District Judge,
(FTC No.III), Vridhachalam.

2. -do-Thro' The Principal Session Judge,
Cuddalore District.

3. The Public Prosecutor,
High Court, Madras.

4. The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District, (Crime No.136 of 2000)

1 cc To Mr.S.Saravana Kumar, Advocate, SR.39898.

Crl.Appeal No.1432/2002.

MDR(CO)
RVL 19.07.2007

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